



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,364	02/15/2002	John K. Savage	29178/38215	3674
4743 7590 12/01/2009 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 SEARS TOWER CHICAGO, IL 60606-6357			EXAMINER NGUYEN, CUONG H	
			ART UNIT 3661	PAPER NUMBER
			MAIL DATE 12/01/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/077,364

Applicant(s)

SAVAGE, JOHN K.

Examiner

CUONG H. NGUYEN

Art Unit

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/10/2009 (a telephone interview).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 1-22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on _____ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is the answer to the “SECOND SUPPLEMENTAL AMENDMENT IN ACCORDANCE WITH 37 CFR 1.173” filed on 8/22/2008, and the telephone interview on 10/11/2009.
2. Claims 1-22 are pending in this application; wherein claims 14-22 are added.

Claim Objections

3. This paper is an official objection to the pending claim 14’s language. Pending claims 14-22 are improper, because they are new claims, to comply with 1.173 the entire claims need to be underlined. Nothing can be bracketed, and in no case is there any acceptable instance of “lining-through” text.

The claimed language still looks like there may be a recapture. The applicant has argued that the limitation “control means for initiating a cooking instruction... at desired time intervals”, in claims 1, and 7 are what makes these claims patentable. That means the applicant has surrendered claims lacking this limitation. This limitation must exist substantially word-for-word in all re-issued claims and can not be broadened in any way (see item # 13 in IFW REISSUE APPLICATION CHECKLIST faxing to the applicant’s representative on 10/11/2009). Since claim 14 does not appear to include this limitation (at least, not completely) – there appears to be a recapture.

The new declaration of 7/39/2007 indicates there is a cont. reissue application. PALM does not indicate any such application? If there is no such application, a new declaration is needed to correct this inconsistency. If there is such an application, then the requirement spelled

out in item # 6 of the reissue guide must be met (see item # 6 in IFW REISSUE APPLICATION CHECKLIST faxing to the applicant's representative on 10/11/2009).

The recited error no longer appears to be relevant as it does not appear to be corrected given the latest version of claim 14 and the cancellation of other claims (see claims filed on 7/30/2007, and claims filed on 8/22/2008) The declaration must recite an error that is actually being corrected at the time of issuance of the reissue application; (see items # 11/17i. in IFW REISSUE APPLICATION CHECKLIST faxing to the applicant's representative on 10/11/2009).

Dependent claims 2-6, 8-13, and 15-22 are objected.

Conclusion

4. Claims 1-22 are objected.
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CUONG H. NGUYEN whose telephone number is 571-272-6759; email address is cuong.nguyen@uspto.gov. The examiner can normally be reached on 9:00 am - 5:30 pm. Mon. – Tues., and Thurs. – Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THOMAS G. BLACK can be reached on 571-272-6956. The Rightfax number for the organization where this application is assigned is 571-273-6759.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Please provide support, with page and line numbers, for any amended or new claim in an effort to help advance prosecution; otherwise any new claim language that is introduced in an amended or new claim may be considered as new matter, especially if the Application is a Jumbo Application.

/CUONG H. NGUYEN/
Primary Examiner
Art Unit 3661